

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IVAN G. McKINNEY,

Plaintiff,

-against-

WARWICK POLICE DEPARTMENT; OFFICER
JOHN DOE; CITY OF WARWICK NEW YORK,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 3/15/2024

23-CV-10405 (NSR)

ORDER OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff Ivan G. McKinney, who currently is incarcerated in New Jersey, brings this action *pro se*, alleging that on July 4, 1993, an officer with the Warwick Village Police Department sexually assaulted him. By order dated January 12, 2024, the court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹

A. Order of service

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and the complaint until the Court reviewed the complaint and ordered that the summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued.

To allow Plaintiff to effect service on Defendants Warwick Police Department and the Town of Warwick through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return forms (“USM-285 forms”) for Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. John Doe police officer

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff appears to supply sufficient information to permit the Warwick Police Department to identify the John Doe police officer who was involved in the incident allegedly occurring on July 4, 1993. It is therefore ordered that the Warwick Police Department must ascertain the identity of the Doe police officer who Plaintiff seeks to sue here and the address where that defendant may be served. The Warwick Police Department must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the Doe defendant. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order.

Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 form with the address for the newly named defendant and deliver all documents necessary to effect service to the U.S. Marshals Service.

CONCLUSION

The Clerk of Court is directed to: (1) issue summonses for the Town of Warwick and the Warwick Police Department, complete the USM-285 forms with the address for Defendants, and deliver all documents necessary to effect service to the U.S. Marshals Service; (2) mail a copy of this order and the complaint to the Town of Warwick Police Department, 132 Kings Highway, Warwick, N.Y. 10990; and (3) mail an information package and a copy of this Order to Plaintiff at the address listed on ECF.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: March 15, 2024
White Plains, New York



NELSON S. ROMÁN
United States District Judge

DEFENDANT AND SERVICE ADDRESS

Town of Warwick
132 Kings Highway
Warwick, N.Y. 10990

Warwick Police Department
132 Kings Highway
Warwick, N.Y. 10990